

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Petitioner,

v.

FRANCISCA DE OCHOA,

Respondent.

Case No. 1:23-cv-01325-EPG

ORDER TO ASSIGN A DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT IRS SUMMONS BE
ENFORCED

I. BACKGROUND

On September 6, 2023, the United States filed a petition to enforce an Internal Revenue Service summons issued to Respondent Francisca De Ochoa. (ECF No. 1); *see* 26 U.S.C. § 7602. The summons “direct[ed] Respondent to appear on October 5, 2022, and to produce for examination books, records, papers, and other data as described in the summons.” (ECF No. 1, p. 2). However, Plaintiff did not produce the sought-after information, which relates to the federal income periods ending December 31, 2008 through December 31, 2015. (*Id.* at 1-2).

On September 13, 2023, the Court issued an order to show cause as to why Respondent should not be compelled to obey the IRS summons, setting a hearing for November 1, 2023. (ECF No. 4). After the Court granted a continuance of the hearing to December 15, 2023, to allow for service on Respondent, the United States filed a proof of service, asserting that the petition, order to show cause, order continuing the hearing, and related documents were personally served on Respondent on

November 13, 2023. (ECF Nos, 7, 8).

At the hearing on December 15, 2023, Attorney Steven Tennyson appeared for the United States. (ECF No. 9). However, Respondent did not respond to the order to show cause and failed to appear at the hearing. (*Id.*).

II. FINDINGS

Subject matter jurisdiction is invoked pursuant to 28 U.S.C. §§ 1340 and 1345 and is found to be proper. 26 U.S.C. §§ 7402(b) and 7604(a) authorize the Government to bring this action in this Court. In order to obtain an order enforcing a summons, the Government must establish: (1) its investigation is for a legitimate purpose, (2) the materials sought are relevant thereto, (3) the information is not already in its possession, and (4) it has taken the necessary administrative steps to obtain enforcement of a summons. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

Based on the uncontroverted petition verified by Revenue Officer Lori Minjarez, and the entire record, the Court makes the following findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and Local 302(c)(9).

1. The summonses issued on August 31, 2022 (ECF No. 1-1 at ¶ 4), and served upon Respondent that same day (*Id.* ¶ 5), seeking testimony and production of documents and records in Respondents' possession was issued in good faith and for a legitimate purpose under 26 U.S.C. § 7602, that is, to secure collection information for the federal income periods ending December 31, 2008 through December 31, 2015. (*Id.* at ¶ 3).

2. The information sought—Respondent's financial books, papers, records, or other data—is relevant to that legitimate purpose. (*Id.* at ¶ 7).

3. The information sought is not already in the possession of the Internal Revenue Service. (*Id.* at ¶ 8).

4. The administrative steps required by the Internal Revenue Code have been followed. (*Id.* at ¶ 9).

5. There is no evidence of a referral of this case by the Internal Revenue Service to the Department of Justice for criminal prosecution. (*Id.* at ¶ 10).

6. The Petition and declaration of Revenue Officer Minjarez constituted a *prima facie* showing that the investigation is conducted pursuant to a legitimate purpose, that the inquiry may be

relevant to that purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Internal Revenue Code have been followed. *See Powell*, 379 U.S. at 57-58.

7. Because Respondent has not presented any argument or evidence, Respondent has not rebutted that *prima facie* showing.

III. ORDER AND RECOMMENDATIONS

The Clerk of Court is respectfully directed to assign a district judge to this action.

Based on the above, IT IS RECOMMENDED that the IRS summonses served upon Respondent be enforced and Respondent be ordered (1) to appear at the Internal Revenue Service offices located at 2525 Capitol Street, Suite 204, Fresno, California 93721 (or by telephone pursuant to the consent of Respondent) before Revenue Officer Minjarez within 60 days of any order adopting these findings and recommendations to give testimony, and (2) to produce for examining and copying the bank statements, passbooks, and other records demanded by the summons.

These Findings and Recommendations are submitted to the District Court Judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B). Within fourteen (14) days of service of these Findings and Recommendations, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The District Court Judge will review the Magistrate Judge's Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

The Clerk of the Court shall serve these Findings and Recommendations, and any further Court orders, by mail to Francisca De Ochoa, at 1536 W. Laguna Avenue, Riverdale, CA 93656.

IT IS SO ORDERED.

Dated: December 20, 2023

/s/ Eric P. Shoj
UNITED STATES MAGISTRATE JUDGE